

In the Matter of	)	
	)	
Implementation of Section 309(j) of the	)	MM Docket No 97-234
Communications Act – Competitive Bidding	)	
For Commercial Broadcast and Instructional	)	
Television Fixed Service Licenses	)	
	)	
Amendment of Service and Eligibility Rules for FM	)	MB Docket No. 07-172
Broadcast Translator Stations	)	RM-11338

To: Office of the Secretary  
Attn: Audio Division, Media Bureau

### COMMENTS SUPPORTING A REQUEST FOR DECLARATORY RULING

I am filing these comments in favor and support of the recently filed petition by Bond Broadcasting, Inc. and East Kentucky Broadcasting Corp on the above matter which requests a declaratory ruling clarifying that the Auction 83 procedures that were announced long ago and that have been in place for a decade will not be altered without a notice and comment proceeding so as to allow for heretofore prohibited major changes to the long pending FCC Form 175 applications of non-commercial educational (NCE) applicants that specify non-commercial educational status.

I am a broadcaster and have filed several translator applications across areas of the United States as a commercial entity in the 2003 filing window. I filed my applications personally and I had so indicated on the forms, clearly, that this was a commercial entity.

I knew from my experiences that mutually-exclusive applications if not settled prior to an auction would end up in an auction and that only commercial entities would qualify to continue in the auction process.

I also knew that for the most part the FCC would not allow settlements to go beyond the amounts of money that any applicant had in the process so there would be no profiteering from this process. This was only fair since one got into the application process to provide a service to the community and not in order to make a windfall in a settlement.

However, I have seen over the past years that certain educational entities have profited considerably by selling or leasing their translators to commercial enterprises. I know this from my own experience in dealing with NCE owners of translators.

In the Orlando Radio Market this has already happened and no one is preventing nor stopping this kind of activity. In the Orlando market, Clear Channel Broadcasting operates 7 full time licenses composed of 5 FM's, 2 AM's and now 3 translators: First, their WRUM-FM, Deltona, is the primary station for W297BB, a Reach Communications translator Licensed to De Bary, Florida. Second, one of their HD jazz channels is carried on W273CA, licensed to Central Florida Education Foundation at

Orlando. Third, their 50 kw AM powerhouse, WFLF, Pine Hills, Florida, is the primary station for W293AN, Altamonte Springs, which is also licensed to Reach Communications, Inc.

Thus, Clear Channel already operates 10 signals in the Orlando market, including 5 Full FM's, 3 Translators and 2 Full Powered AM's (both 50 KW each). This clearly exceeds the number of signals that can be programmed by a single entity under FCC rules, but by using translators (which have significant coverage, especially in flat terrain such as in Florida) instead of full-power stations, they are able to do so.

It is important to note that each of these translators was sought by, and is licensed to, a noncommercial applicant, presumably to provide a non-profit community service. Instead, they are being used by Clear Channel to circumvent the local ownership limits.

This is not surprising. NCE entities know where the money is and go after large radio corporations with their translator prize adding to the conditions that have caused small broadcasters more problems in their effort to compete. NCE entities have sold or leased their translators to major corporations providing another signal for them to control a marketplace and yet not have that signal count against their ownership cap. Owners use the translator to rebroadcast content from some of their HD channels and their own AM powerhouses.

It has also been my experience that NCE entities with translator licenses hire brokers to do their 'bidding'. Even those without brokers who hold NCE licenses know the big group and corporation players in their markets and deal directly with the prospects looking to lease or acquire NCE translator signals. They call on big signal FM's and high powered AM's knowing they can afford their prices and it won't count against any market "caps" imposed by the FCC.

Theoretically, group owners can control dozens of signals in a given market by simply accumulating translators, either by purchase or "lease," to rebroadcast their already dominant signals, including HD streams of commercial stations that are not generally available in the market. Clearly this violates the spirit, if not the letter, of the local ownership limits and allows a large broadcaster to swamp a market with its programming. This is anti-competitive, pure and simple.

I recognize that it costs significant sums to operate even a low power NCE station, and so an income stream is needed and it is tempting for NCE licensees to sell or lease to commercial stations. Group Owners work with NCE operators because they know they have the licenses for the translators in most markets across the country.

Orlando is not an isolated example of this problem of translators adding to market dominance by a major group. Cox Broadcasting has a translator signal that broadcasts from one of its HD channels and has one of the top audiences in the market in an age demo of young adults. The following information appeared in a broadcast publication on line called "Inside Radio" which came to me on or about March 22, 2013. It reads as follows:



## UPSTART TRANSLATOR BRAND FIRES UP URBAN FORMAT

In what may be an industry first, an HD-fed translator has catapulted to No. 1 among 18-34 year-olds in Jacksonville in two months. Cox Media Group's urban "Power 106.1" launched in early January using the translator W291CI and relaying an HD2 channel from classic hits sister "96.9 The Eagle" WJGL.

FCC "caps" have no meaning with the use of translators by major group owners growing. One way to stop this abuse of the ownership limitations is to adhere to the well-established policy of dismissing NCE applicants who compete as mutually-exclusive with commercial operators. These applications supposedly were not filed for the purposes of extending the dominance of commercial stations and so they should not have the opportunity to do so.

A related problem is the further, continuing delay that NCE applicants are causing to the processing of commercial applications. For example, there are 7 applicants in the Orlando area for an FM Translator on Ch 226. All of the applicants except one are NCE applicants. The sole commercial applicant for Ch 226 is my application. If the FCC enforces its rule, none of the NCE applicants would go to auction and I would be the only singleton applicant for Ch 226 which would enable me to rebroadcast my standalone AM WRSO on 810 AM, providing my application clears any other technical hurdles with adjacent channels. This is readily-available help that I, and many other struggling AM stations, need to survive. It would be unfair to allow currently-ineligible NCE translator applicants to continue to clog up this process.

As noted in paragraph 12 of the petition for request for a Declaratory Ruling: "It is established Commission procedure that NCE applications are subject to dismissal if mutually-exclusive with an application filed for a commercial station unless all applicants successfully effect a settlement agreement or provide an engineering solution removing the mutual exclusivity".

It is therefore unfair for the FCC to change its long-established Auction 83 procedures by allowing applicants who chose non-commercial educational status on their Forms 175 to now amend their applications with a major change to specify commercial status. It's like opening a whole new "window" in this proceeding and can only encourage the filing by ostensibly community-oriented NCE entities of facilities that can be used instead for commercial purposes. That, in turn, will further encourage the type of abuse that is already taking place and that I have described above.

Please rule that the current Auction 83 rules and procedures will not change.

Respectfully Submitted,



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March 27, 2013